

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. 1:07cr104WJG-RHW-1
CIVIL ACTION NO. 1:10cv101WJG

WALLACE HAYNES, III

ORDER

THIS CAUSE comes before the Court on the motion [27] to vacate under 28 U.S.C. § 2255 filed by Defendant Wallace Haynes III. The Petition alleges that Defendant's counsel at the time of his plea and sentencing, Donald J. Rafferty, failed to file an appeal as directed by Defendant, and/or Defendant's wife.

Mr. Rafferty states in his affidavit filed in response, (Ct. R., Doc. 29), that at no time was Defendant or any member of Defendant's family advised an appeal would be filed on Defendant's behalf. An evidentiary hearing in this matter held December 9, 2010, was of little benefit, and the hearing was continued to January 19, 2011. (Ct. R., Doc. 32.) In the supplemental response filed by the United States of America [United States] on December 14, 2010, (Ct. R., Doc. 33), based upon the information in the record the United States conceded that Defendant should be given the opportunity file an out-of-time appeal. It is therefore,

ORDERED that Defendant Wallace Haynes, III be granted leave of Court to file his out-of time notice of appeal. A copy of this Order shall be mailed to Defendant at the Pearl River County Jail, 200 South Main Street, Poplarville, Mississippi 39470, where he is being

temporarily housed, in addition his address appearing on the docket of this Court. It is further,

ORDERED that the hearing in this matter set for January 19, 2011, is hereby cancelled. It is further,

ORDERED that Defendant's motion [27] to vacate be, and is hereby dismissed.

SO ORDERED AND ADJUDGED this the 14th day of December, 2010.

Walter J. Sex III

UNITED STATES SENIOR DISTRICT JUDGE